BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CATALINA VIEW OIL COMPANY)

Appearances:

For Appellant: Black, Hammack & Black

For Respondent: Chas. J. McColgan, Franchise Tax Commissione

O P I N I O N

The petitioner appeals to this Board in pursuance of Sectior 25 of the Bank and Corporation Franchise Tax Act (Statutes Of 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the petitioner's protest against a proposed assessment of additional taxes in the amount of $98.70 based on the petitioner's return for the taxable year ended December 31, 1930.

The assessment of additional taxes was proposed by the Commissioner inasmuch as he considered taxes paid on certain minerai rights, derricks, engines, oil wells, tanks and boilers as real estate taxes, and hence allowed an offset of but 10% of such taxes, whereas the petitioner had offset the full amount of such taxes on the theory that they were personal property taxes.

Section 16 of Article XIII of the Constitution, in pursuance of which the Bank and Corporation Franchise Tax Act was passed, provides in subdivision 2(a) that the tax on corporations of the classes therein specified for the privilege of exercising their corporate franchises within the state

> "shall be subject to offset, in a manner to be prescribed by law, in the amount of personal property taxes paid by such corporations to the state or political subdivisions thereof, but the offset shall not exceed 90% of such state tax."

Subdivision 3 provides that:

> "The Legislature, two-thirds of all the members elected to each of the two houses voting in favor thereof, may change by law the rates of tax, or the percentage, amount or nature of offset provided for in paragraphs 1 and 2 here-Of."

Section 26 of the Bank and Corporation Franchise Tax Act provides that:

> "A corporation subject to the tax herein provided for shall receive an offset against such tax, subject to the limitations provided in section 4 hereof, for real and personal property taxes paid upon its property to any county, city and county, city, town, or other political subdivision of the state during the taxable year."

Section 4 of the act provides that the corporations subject to taxation under the act

> "shall be entitled to an offset against said franchise tax, * * * in the amount of taxes paid upon its real and personal property to any county, city and county, city, town, or other political subdivision of the state, but the total offset shall not exceed 75 percenturn of the said franchise tax, and in no case shall a taxpayer be entitled to offset more than 10 percenturn of its said real property taxes."

It is to be noticed that Section 16 of Article XIII of the Constitution provides an offset only for personal property taxes. The Legislature, however, has provided for offsetting both personal property taxes and real property taxes subject to a maximum of 75% of the franchise tax, and subject to the condition that real property taxes shall not be offset in any amount in excess of 10% of said taxes, Whether the Legislature is empowered to provide for offsetting real property taxes is open to question. However, we do not believe that we should consider this problem in the instant appeal.

The sole point involved in this appeal is whether taxes paid on mineral rights, derricks, engines, oil wells, tanks and boilers are, or are not to be considered "personal property taxes". If such taxes are personal property taxes, then the Appellant is entitled to an offset of the full amount of such taxes, and consequently the Commissioner should be overruled. If, however, said taxes are not to be considered personal property taxes, then the action of the Commissioner in overruling the petitioner's protest should be affirmed.

Neither Section 16 of Article XIII of the Constitution nor the Bank and Corporation Franchise Tax Act define the term "personal property" or "personal property taxes". Hence, we must look elsewhere.

Section 3617 of the Political Code which defines terms as used in the statutes passed to carry into effect the provisions of Article XIII of the Constitution, other than Section 16, defines personal property as including "everything which is the subject of ownership not included within the meaning of the term 'real estate' or 'improvements'".

By the same section, real estate is defined, insofar

as is material in the instant appeal, as including

"1. The possession of, claim to, ownership of, or right to the possession of land.

"2. All mines minerals and quarries in and under the land * * * and all rights and privileges appertaining thereto. * * *

"4. Improvements."

Section 3617 defines "improvements" as including:

"All buildings, structures, fixtures, fences, and improvements erected upon or fixed to the land, except telephone and telegraph lines."

We are of the opinion that the above definition of "improvements", which are included in the term "real estate" and excluded from the term "personal property", is sufficiently broad to cover the items of derricks, engines, oil wells, tanks and boilers involved in this appeal, insofar as the same are not directly included in the term "real estate", (See California Domestic Water Co. vs. Los Angeles County, 10 Cal. App. 185, wherein it was held that wells, pumping *machinery* and pipe lines flumes, conduits, et cetera, on water or water bearing lands are real estate, together with the lands.)

The exact nature of the mineral rights involved in this appeal does not clearly appear. It is assumed, however, that they are either leasehold interests in oil lands or are rights to bore for and extract oil. If this assumption is correct, it is to be noted that it has been generally held that where leasehold interests or possessory rights in land are subject to assessment and taxation separately from the land, they are subject to assessment and taxation as real estate. Thus, it was held in Bakersfield etc. Co. v. Kern County, 144 Cal. 148, that a possessory right to a mining claim was real estate. In San Pedro etc. R.R. Co. v. Los Angeles, 180 Cal. 18, it was held that a leasehold interest in tidelands was real estate. In Graciosa Oil Co. v. Santa Barbara, 155 Cal. 140, and Mohawk Oil Co. v. Hopkins, 196 Cal. 148, possessory rights and leasehold interests in oil lands were held to be real estate as that term is defined in Section 3617 of the Political Code.

By virtue of the above decisions, it appears beyond question that the mineral rights involved herein are within the purview of the term "real estate" as defined in Section 3617 of the Political Code and hence are excluded from the term "personal property" as defined in said section.

The question then arises: Are taxes on mineral rights, derricks, engines, et cetera, to be considered taxes on real estate or is it nevertheless possible to hold that said taxes are personal property taxes? In this connection, it can be said that it would seem strange, indeed, if taxes on property that is

defined as real estate could by any stretch of the imagination be considered personal property taxes.

However, it is to be noted that taxes on some of the property included within the term "real estate" in Section 3617, when the same are unsecured by a fee interest in taxable land, are to be collected, in accordance with Section 3'20 of the Political Code, in the same manner as taxes on personal property taxes are collected when the latter are unsecured by real property. The exact language of Section 3820 so providing is as follows:

> "The taxes on all assessments of possession of, claim to, or right to the possession of land, and the taxes on taxable improvements located upon land exempt from taxation, shall be immediately due and payable upon assessment and when collected by the assessor shall be collected by the assessor as provided in part three, title nine, chapter eight of this code, unless, in the same county, the owner or claimant of such possession of, claim to or right to the possession of land, or of such improvements shall also own taxable real property, in fee, in which event the taxes due upon such possession of, claim to or right to the possession of land, or upon such improvements, are respectively a lien upon such taxable real property so owned in fee ***".

In the case of Graciosa Oil Co. v. Santa Barbara, it was held that a leasehold interest in oil lands under which the lessee had the right to bore for and extract oil was assessable to the lessee separately from the land. Since the decision in this case, taxes on leasehold interests or possessory interests in oil lands have been collected under Section 3820 (see a statement to this effect in Mohawk Oil Co. v. Hopkins, 196 Cal. 14.8, at p. 151). Insofar as we know. the same procedure has been followed with respect to derricks, engines; boilers, et cetera, where the same are unsecured by a fee ownership in land. This procedure was not questioned in the case of Graciosa Oil Co. v. Santa Barbara, and was expressly sustained in Mohawk Oil Co. v. Hopkins.

The Appellant seems to contend that if taxes on the mineral rights, oil derricks, et cetera, in question are collected as taxes on personal property are collected in certain instances, they are then to be considered personal property taxes. We fail to see any merit in this contention. The fact that taxes on certain property are collected as taxes on personal property are collected in certain instances does not compel the conclusion that the taxes are therefore personal property taxes. The classification of taxes as personal property taxes or real estate taxes is to be determined, not by the method employed in collecting the taxes, but by the classification as personal property or real estate of the property upon which the taxes are assessed.

This view is amply supported by authority. In both Gracios Oil Co. v. Santa Barbara and Eohawk Oil Co. v. Hopkins, the Court was careful to point out that leases of oil lands and possessory interests in oil lands were real estate, although the method followed for collecting taxes on the same was that described in Section 3820. in Ventura County v. Barry? 207 Cal. 189, it was expressly held that taxes on leasehold interests and possessory interests in oil lands, although collected under Section 3820 were not personal property taxes as that term is used in Section 4290 of the Political Code authorizing the assessor to receive and retain for his own use "6% of personal property tax collected by him, as authorized by Section 3820."

The only question then remaining for us to decide is whether the definition of personal property as given in Section 3617 of the Political Code should control in determining the meaning of the term "personal property" as used in Section 16 of Article XIII of the Constitution and in the Bank and Corporation Franchise Tax Act.

Section 3617 defines terms as used in statutes passed to carry into effect Article XIII of the Constitution other than Section 16. This section was in full force and effect at the time Section 16 was adopted. It seems to us reasonable to assume that it was intended that the term "personal property!' as used in Section 16 of Article XIII of the Constitution should have the same meaning as was given to the term in the laws passed to carry into effect other provisions of Article XIII. if the contrary had been intended, it would seem that such an intention would have been expressed.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Catalina View Oil Company, a corporation, against a proposed assessment of an additional tax of $98.70, with interest, under Chapter 13, Statutes of 1929, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of April, 1932, by the State Board of Equalization.

R. E. Collins, Chairman
H. G. Cattell, Member
Fred E. Stewart, Member
Jno. C. Corbett, Member

ATTEST: Dixwell L. Pierce, Secretary